

**A RESOLUTION  
BY FINANCE/ EXECUTIVE COMMITTEE**

**09-R- 2200**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BY AND AMONG THE CITY OF ATLANTA, THE ATLANTA DEVELOPMENT AUTHORITY AND THE ATLANTA INDEPENDENT SCHOOL SYSTEM DATED JANUARY 1, 2004 IN CONNECTION WITH THE TAX ALLOCATION DISTRICT NUMBER THREE - PERRY/BOLTON; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City Council of the City of Atlanta, Georgia (the "City"), by Resolution 02-R-2094, adopted on December 2, 2002, and approved by the Mayor on December 10, 2002, created the City of Atlanta Tax Allocation District Number Three - Perry/Bolton (the "Perry Bolton TAD"); and

**WHEREAS**, the City, the Authority and the Atlanta Independent School System ("APS") entered into that certain Intergovernmental Agreement, dated January 1, 2004 (the "Intergovernmental Agreement"), governing matters related to the Perry Bolton TAD; and

**WHEREAS**, it has been determined to be in the best interest of the Perry Bolton TAD to make certain amendments to the terms of the Intergovernmental Agreement by entering into the First Amendment to Intergovernmental Agreement (the "First Amendment"), the form of which is attached hereto as Exhibit A, such amendments shall release certain educational ad valorem tax increments previously collected to APS, extend the date by which any tax allocation bonds secured by APS increment may be issued, acknowledge the ability to pledge educational ad valorem tax increment to secure tax allocation bonds in the Perry Bolton TAD, and extend the date by which APS and the Atlanta Housing Authority must reach an agreement regarding the donation of land for a school within the Perry Bolton TAD.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES**, that the Mayor is hereby authorized to execute the First Amendment amending the terms of the Intergovernmental Agreement by and among the City, the Authority and APS. The First Amendment shall be in substantially the form attached hereto as Exhibit "A", and the execution of the First Amendment by the Mayor as hereby authorized shall be conclusive evidence of its approval.

**BE IT FURTHER RESOLVED**, that the First Amendment will not become binding upon the City, and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to the contracting parties.

**BE IT FINALLY RESOLVED**, that all resolutions and parts of resolutions in conflict with the provisions contained herein are waived to the extent of such conflict.

## EXHIBIT A

### First Amendment to Intergovernmental Agreement

EXECUTION COPY  
Perry/Bolton TAD

**FIRST AMENDMENT TO  
INTERGOVERNMENTAL AGREEMENT AMONG  
THE CITY OF ATLANTA, GEORGIA,  
THE ATLANTA DEVELOPMENT AUTHORITY, AND  
THE ATLANTA INDEPENDENT SCHOOL SYSTEM**

This First Amendment to Intergovernmental Agreement (this "Amendment") is made and entered into effective as of the \_\_\_\_ day of November, 2009 by and among the City of Atlanta, a municipal corporation of the State of Georgia (hereinafter referred as the "City"), The Atlanta Development Authority, a public body corporate and politic of the State of Georgia (hereinafter referred to as the "Authority" or "ADA"), and the Atlanta Independent School System (hereinafter referred to as the "Atlanta Public Schools" or "APS").

**WHEREAS**, the City Council of the City, by Resolution 02-R-2094 (the "Initial Perry Bolton Resolution"), adopted on December 2, 2002, as approved by the Mayor of the City on December 10, 2002, created Tax Allocation District Number Three – Perry/Bolton (the "Perry/Bolton TAD"); and

**WHEREAS**, the initial Perry Bolton Resolution was amended by the City Council of the City by Resolution 06-R-2571, adopted on December 4, 2006, as approved by the Mayor of the City on December 13, 2006 (the "Amending Perry Bolton Resolution") which, together with the initial Perry Bolton Resolution, is referred to as (the "Perry Bolton Resolutions"); and

**WHEREAS**, on or about December 9, 2002, the Atlanta Board of Education, which operates APS (the "Board") approved Report Number 02/03-0118, a resolution providing its consent for the inclusion of positive tax increment derived from the educational ad valorem property tax milage rate established by the Board and levied by

Fulton County in the computation of positive tax increment for the Perry/Bolton TAD (the "Consent Resolution"); and

**WHEREAS**, the City, the Authority, and the Atlanta Public Schools pursuant to the Consent Resolution entered into an Intergovernmental Agreement dated January 1, 2004 (the "Intergovernmental Agreement") memorializing the conditions for the consent expressed in the Consent Resolution; and

**WHEREAS**, on or about March 14, 2005, the Board approved Report Number 04/05-0121 amending Report Number 02/03-0118 to provide for, among other things, a revised Intergovernmental Agreement to include the costs of the acquisition, construction and equipping relating to the development of a new elementary school with funding from positive tax allocation increments generated within the Perry/Bolton TAD or from the proceeds of any tax allocation district bonds, and limiting the amount of tax allocation bonds that may be issued by the Perry/Bolton TAD and the timeframe within which such bonds may be issued, and for other purposes; and

**WHEREAS**, on or about February 11, 2008, the Georgia Supreme Court declared that the use of educational ad valorem tax revenue for non-educational purposes violated the Constitution of the State of Georgia; and

**WHEREAS**, the voters of the State of Georgia amended the Constitution in a Statewide Referendum in November of 2008, and the Georgia General Assembly passed House Bill 63 (the "Reenactment") on or about April 3, 2009, which promulgated a new Redevelopment Powers Law and ratified every previous school district tax allocation district consent resolution with respect to which the school district failed to opt out of participation in that TAD prior to the effective date of the Reenactment; and

**WHEREAS**, on or about April 13, 2009, the Board approved Report No. 08/09-0108, a Resolution amending the December 9, 2002 Perry Bolton Consent Resolution by changing its effective date to the date that the Reenactment was signed into law,

unless the APS staff negotiated a resolution to the retroactive use of the APS ad valorem tax revenues in the Perry/Bolton TAD that is approved by the Board no later than the Board's legislative meeting in June, 2009; and

**WHEREAS**, the Governor signed the Reenactment into law, and it became effective on April 22, 2009; and

**WHEREAS**, from the inception of the Perry/Bolton TAD through the effective date of the Reenactment, educational ad valorem taxes levied within the Perry/Bolton TAD generated incremental revenue (the "Retroactive Increment") in the approximate amount of \$6,000,000.00, of which, as of April 21, 2009, the Tax Commissioner of Fulton County has remitted not less than \$4,078,322.70 to the City and/or ADA and has remitted approximately \$2,013,483.09 to APS; and

**WHEREAS**, it has been determined to be in the best interests of the City, the Authority, and the Atlanta Public Schools to revise certain terms of the Intergovernmental Agreement, and the City, the Authority, and the Atlanta Public Schools desire to amend the Intergovernmental Agreement to reflect the modification of certain terms and conditions;

**WHEREAS**, on or about June 8, 2009 the Board adopted a Resolution (Report No. 08-09-0113) amending, among other things, the Consent Resolution and the Resolution of April 13, 2009, and approving the execution of this Amendment; and

**WHEREAS**, the execution of this Amendment is authorized by the City and the ADA by virtue of a Resolution adopted by the Board of Directors of ADA on June 18, 2009 and by virtue of Resolution by the Council of the City on December 7, 2009.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Intergovernmental Agreement as follows:

1. **Acknowledgement of the use of school district increment.** Atlanta Public Schools hereby acknowledges that, subject to the terms of the Intergovernmental Agreement and this Amendment, educational ad valorem tax allocation increments levied after April 22, 2009 (the effective date of the Reenactment) and not otherwise released to Atlanta Public Schools in accordance with the terms of this Amendment, may be used to fund redevelopment costs for the Perry/Bolton TAD as defined in the Georgia Redevelopment Powers Law (O.C.G.A. § 36-44-1 et seq.) and as described in the Redevelopment Plan for the Perry/Bolton TAD, and to secure bonds issued for the Perry/Bolton TAD.

2. **Release of Retroactive Increment.** It is hereby agreed that all of the Retroactive Increment shall be remitted to or retained by the Atlanta Public Schools for its general purposes. That portion of the Retroactive Increment that the Tax Commissioner of Fulton County has remitted to Atlanta Public Schools may be transferred to the general fund of Atlanta Public Schools, contingent upon constraints imposed by pending court order(s), if any, in Clark, et al. v. AISS. et al., No. 2008-CV-161720 in the Superior Court of Fulton County. Immediately upon the removal of any constraints imposed by such pending orders, the City and/or ADA shall immediately transfer to Atlanta Public Schools that portion of the Retroactive Increment that the Tax Commissioner of Fulton County has previously remitted to the City or ADA, whether it is being held in the special fund for the Perry/Bolton TAD or otherwise. The Atlanta Public Schools will provide, in writing, the instructions for delivery of such funds.

3. **Acknowledgment of Condition Precedent.** The Consent Resolution originally provided that APS's consent shall not be effective until the Atlanta Housing Authority has entered into a binding agreement with the Atlanta Public Schools for the donation of land for an elementary or other school to be located within the Perry/Bolton TAD. That condition is hereby modified such that the consent is effective as of the

effective date of the Reenactment, provided that, in the event that the Atlanta Housing Authority and the Atlanta Public Schools fail to enter into a binding agreement for the donation of land for an elementary or other school to be located within the Perry/Bolton TAD to the satisfaction of both parties, by December 31, 2015, the consent of APS shall terminate and the City and the ADA shall issue no further bonds secured with APS' portion of the positive tax increment derived in the Perry/Bolton TAD.

4. **Extension of Five Year Period.** Section 2 of the Intergovernmental Agreement is hereby amended by deleting its current text in its entirety and inserting the following in lieu thereof:

The City and the Atlanta Public Schools hereby agree that the APS portion of the tax allocation increment may be used to secure tax allocation bonds issued to finance eligible redevelopment costs within the District for a five-year period beginning with the date of the issuance of the first bond (hereinafter the "five-year period"); provided, however, that in no event shall the five-year period commence after January 1, 2011. To the extent the City desires to issue additional tax allocation bonds secured by the APS portion of the tax allocation increment after the expiration of the Five-Year Period, such additional tax allocation bonds may be issued only by specific approval of the Board. Notwithstanding the foregoing, the City may issue refunding tax allocation bonds at any time during the term of the district without the approval of the Board if (i) such refunding is primarily designed to affect interest cost savings and (ii) the maturity date of such refunding tax allocation bond does not exceed the maturity date for the tax allocation bonds refunded thereby.

5. **Entire Agreement.** This Amendment, together with the Intergovernmental Agreement, constitutes the sole and entire agreement between the

parties hereto with respect to the subject matter hereof, supersedes all prior discussions, oral and written, about the subject matter hereof, and no modification of the Agreement or this Amendment shall be binding unless in writing and signed by the parties to the Agreement or this Amendment. No representation, promise or inducement not included in the Intergovernmental Agreement or this Amendment shall be binding upon any party hereto.

6.     **Counterparts.**     This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the original or same counterpart.

7.     **Governing Law.**     This Amendment shall be construed and enforced in accordance with the laws of the State of Georgia.

**[SIGNATURES ON FOLLOWING PAGE]**



**In witness whereof**, the parties hereto have executed this Amendment effective  
as of the day and year first above-written.

CITY OF ATLANTA, GEORGIA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Municipal Clerk

[SEAL]

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

ATLANTA DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Peggy McCormick  
President

[SEAL]

ATLANTA BOARD OF EDUCATION  
ATLANTA INDEPENDENT SCHOOL SYSTEM

By: \_\_\_\_\_  
Beverly L. Hall, Ed.D  
Superintendent

[SEAL]

Approved as to Form:

By: \_\_\_\_\_  
AISS General Counsel